Privy Council Appeal No. 63 *of* 1922.

Vaidyanatha Ayyar and another - - - - - - *Appellants*

v.

K. Swaminatha Ayyar and another - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH JUNE, 1924.

Present at the Hearing :

LORD SHAW.
LORD BLANESBURGH.
SIR JOHN EDGE.

[*Delivered by* SIR JOHN EDGE.]

These are consolidated appeals by defendants in a suit, No. 1 of 1916, from two decrees, dated the 13th November, 1919, of the High Court at Madras, which affirmed with a trifling variation as to some property claimed, a preliminary decree, dated the 15th April, 1918, and a final decree, dated the 30th September, 1918, of the Subordinate Judge of Kumbakonam.

The suit relates to a chatram, also called a choultry, at Kumbakonam, and property alleged to be endowed property of the chatram. The chatram is now known as Kalyanarama Ayyar's chatram. Formerly it was known as Rajappa Ayyar's chatram. Two Brahmins were the plaintiffs. Since the suit was in appeal in the High Court one of the plaintiffs died ; his legal representative is now on the record and is one of the respondents.

The plaintiffs on the 13th November, 1916, brought this suit and claimed a declaration that the chatram was a public charitable institution having the properties mentioned in Schedule B of the plaint and seven-ninths of the properties mentioned in Schedules

C to F as endowments ; a declaration that the defendants are not lawfully appointed trustees and are not entitled to any right to the management and administration of the institution or in the properties belonging to it ; that the defendants be removed from the office ; that fit and proper persons be appointed trustees for the administration of the trust and that the chatram and the properties belonging to it be vested in them ; that a scheme for the administration of the trust be settled ; and other reliefs. The case of the plaintiffs was that the chatram was a public chatram, which had been founded and dedicated to the public more than 60 years before suit as a charitable institution for the convenience of travellers as a halting place and for the feeding of poor Brahmins resorting to it. The plaintiffs had obtained under section 92 of the Code of Civil Procedure, 1908, the consent in writing of the Advocate-General to their institution of the suit.

The defendants denied that the plaintiffs were persons who had an interest in the trust within the meaning of section 92 of the Code of Civil Procedure, 1908. They alleged that the chatram was a private chatram, and they denied that it had ever been dedicated to the public, and that it had ever been endowed with any of the properties claimed as endowments ; they pleaded that they had been duly appointed trustees, and other matters which are immaterial if they had not been duly appointed as trustees.

The learned Subordinate Judge who tried the suit recorded oral and documentary evidence, and he found that the plaintiffs having obtained the consent in writing of the Advocate-General were persons who were entitled to institute the suit ; that the chatram had been dedicated to the public and had been endowed as alleged in the plaint ; that the defendants were not duly appointed trustees, and decided that a scheme for the management of the trust should be framed ; and he framed a scheme for the management of the trust. The learned Judges of the High Court on appeal concurred with the findings of the Subordinate Judge except that they found that a small portion of the property claimed as endowment was not endowed property and with that variation as to the endowed property affirmed by their decrees the decrees of the Subordinate Judge, and dismissed the appeals to their Court. From those decrees of the High Court these consolidated appeals have been brought.

Mr. Upjohn, who appeared for the appellants, in his very able and exhaustive argument in support of these consolidated appeals, took and relied upon four points only. They were (1) that the plaintiffs were not persons who had an interest in the charitable trust within the meaning of section 92 of the Code of Civil Procedure, 1908, and consequently had no *locus standi* to institute this suit ; (2) that the chatram was not proved to be a public trust ; (3) that the courts below had misconstrued the will of Swaminatha Ayyar of the 7th November, 1881 ; and (4) that the first defendant had been properly appointed a trustee and there was no ground for removing him from his office as trustee of the charity. Their

Lordships will deal with these points in the order in which they were argued by Mr. Upjohn.

Mr. Upjohn's first point was that assuming for the purpose only of his argument that the chatram had been dedicated to the public with a trust created for public purposes of a charitable nature, the suit would not lie if the plaintiffs had not within the meaning of section 92 of the Code of Civil Procedure, 1908, an interest in the trust. That is a perfectly sound argument. The consent in writing of the Advocate-General to the institution of the suit by the plaintiffs would not bring the suit within the meaning of section 92 of the Code of Civil Procedure, 1908, unless the plaintiffs had an interest in the trust. Mr. Upjohn contended that the plaintiffs had no interest in the trust within the meaning of section 92. The question is had the plaintiffs an interest in the trust within the meaning of the section ? They were descendants in female lines of Rajappa Ayyar and his son Kalyanarama Ayyar, one of whom, probably the former, founded and dedicated to the public the chatram as a charitable institution, and are of the founder's kin. The chatram was at first known as Rajappa Ayyar's chatram and was subsequently known as Kalyanarama Ayyar's chatram.

On the 22nd August 1864 the five sons of Kalyanarama Ayyar executed a partition deed in which the chatram and the lands then belonging to it, from which the income of the chatram was derived, were mentioned. The lands belonging to the chatram were excepted from the partition, but it was agreed that the five brothers should manage the chatram lands according to the order of seniority. It is obvious that the chatram must have been endowed with these lands before the date of that deed of partition. Mr. Upjohn contended that " an interest in the trust " to be within section 92 of the Code of Civil Procedure, 1908, must be some special interest and not merely a sentimental interest, and he referred to the dictum of Lord Eldon, L.C., in *Re the Master Governors and Trustees of the Bedford Charity*, 2 Swanston's Chancery Reports at page 518, in which in a reference to Sir Samuel Romilly's Act (52 Geo. 3, c. 101), which authorised persons other than the Law Officers to present petitions to the Court in certain matters of public charities, Lord Eldon said :

> " The Act, indeed, authorises ' any two or more persons ' to present a petition ; but I conceive that those words must be understood to mean persons having an interest,"

which earlier at page 518 Lord Eldon interpreted as meaning " a direct interest in the charity."

Mr. Upjohn also referred to the observations of Lord Eldon, L.C., in *The Corporation of Ludlow &c.* v. *Greenhouse and others*, 1 Bligh's Reports, N.S., at page 17. It may be that the dictum of Lord Eldon in the *Bedford Charity* case caused those who were responsible for the drafting of section 539 of the Code of Civil Procedure of 1877 (Act X of 1877) to draft that section as giving a right in cases of a breach of

a trust created for public charitable purposes to " two or more persons having a direct interest in the trust," and who had obtained the consent of the Advocate-General, to institute a suit under that section. It must, however, have subsequently appeared to the Governor-General of India in Council that the limitation of a " direct " interest was not expedient in India, and it was enacted by section 44 of the Civil Procedure Amendment Act, 1888, which amended the procedure then in force, " That in section 539, for the words having a direct interest the words having an interest shall be substituted."

It may be that Coutts Trotter J., was correct in stating, in *Ramachandra Aiyar* v. *Parameswaran Unni*, I.L.R. 42 Mad. at page 395, that it was in consequence of the decision in *Jan Ali* v. *Ram Nath Mundul*, I.L.R. 8, Cal. 32, that the change in the law was made by omitting the word " direct." In that case the High Court at Calcutta had held that the plaintiffs there, two Muhammadans who lived in a village and worshipped regularly at the village mosque, had no direct interest in the mosque. Their Lordships would have considered that Muhammadans who worshipped regularly in the mosque of the village had a direct interest in the trust relating to the mosque. But so that they may not be misunderstood as to the meaning of ' interest ' in section 92 of the Code of Civil Procedure, 1908, they think it advisable to say that public " Hindu Temples are *prima facie* to be taken," as Sir John Wallis, C.J., said in *Ramachandra Aiyar* v. *Parameswaran Unni, supra*, at page 368, " to be dedicated for the use of all Hindus resorting to them." They agree with Sir John Wallis that the bare possibility, however remote, that a Hindu might desire to resort to a particular temple gives him an interest in the trust appears to defeat the object with which the Legislature inserted these words in the section. " That object was to prevent people interfering by virtue of the section (section 92) in the administration of charitable trusts merely in the interests of others and without any real interest of their own." In the present case their Lordships are of opinion that the fact that the plaintiffs are descendants although only in female lines of the founder of the chatram gave them an interest in the proper administration of the trust sufficient to enable them to maintain this suit, although they themselves may never find it necessary to use the chatram as a rest house or to obtain food there.

As to the second point argued by Mr. Upjohn it is sufficient to say that there are concurrent findings that the chatram was a public trust, and their Lordships may add they also find that the chatram is a public trust.

As to third point argued by Mr. Upjohn, that the courts below misconstrued the will of Swaminatha Ayyar of the 7th November, 1881, that contention if well founded would show that the gift of some of the property to the chatram which each court has found to belong to the chatram was a void gift within the decision of the Board in *Runchordas Vandrawandas* v. *Pavatibhai*,

26 I.A. 71. The testator was one of the five sons of Kalyanarama Ayyar. It is not necessary to set out the translation of the whole of his will; the contention turns on the meaning of part of the will.

After referring to the partition of 22nd August, 1894, between him and his brothers and some other matters, the testator's will as translated continues, so far as is material, as follows :—

> " The arrangement which I make regarding the aforesaid properties is this.—After my decease my properties and my estate shall be managed with all rights by my divided brothers—K. Venkataranga Ayyar and K. Suryanarayana Ayyar as executors. The incomes from the villages and gardens shall be divided into 3 portions and 2 portions thereof shall be given to my wife, and the said house and the *Ethiradi manai* (manai in front of it) be given to her for her occupation ; and with the remaining one portion, the debts due by me and the debts contracted by me and K. Venkataranga Ayyar on the security of our family properties shall be discharged. After the said two kinds of debts are discharged, the said executors shall with the said one-third portion of the said income make annadhanam (feed poor people) in our family choultry in Perumbandi now under the management of K. Venkataranga Ayyar. My wife shall take all the aforesaid moveable properties and enjoy them according to her pleasure, and if she dies leaving any moveable properties, they shall be used by the said executors themselves for the said feeding charity. After my wife's decease, 2 out of 3 portions of the income enjoyed by her shall be utilised for the charity and the remaining 1 out of the 3 shares, and the dwelling house and manai in front, shall be taken by K. Venkataranga Ayyar and K. Suryanarayana Ayyar and their posterity. The other *dayadis* have no right whatever."

Their Lordships assume the words " the charity " in the translation are the correct rendering of the vernacular which they are informed is in Tamil. If those words are the correct rendering of the vernacular they plainly refer to the chatram charity which had immediately before been indicated and the gift was not void for uncertainty. The original will was before the learned Subordinate Judge who tried the suit and who understood Tamil. This is what he said as to that part of the will :—

> " 14. It is next contended that this gift of a $\frac{3}{3}$rd share in the $\frac{2}{3}$rd share to a ' Dharmam ' was invalid, and the decision in I. L. R. XXX Madras series 340 was relied upon. A persual of Swaminatha Ayyar's will indicates to my mind that the " Dharmam " he intended to create in respect of the $\frac{3}{3}$rd share in the $\frac{2}{3}$rd share was the Dharmam to which he gave a $\frac{1}{3}$rd share in the income : and that the gift of $\frac{3}{3}$rd share of a $\frac{2}{3}$rd share is not void for uncertainty.
>
> 15. It was lastly contended that it was not open to this Court to construe the terms of Swaminatha Ayyar's will, in so far as they relate to the charity : but it appears to me that it is open to this Court to see what interest the charity has in Swaminatha Ayyar's properties. I therefore find that the chatram has a $\frac{1}{3}$th share in the income from the C to F schedule properties under Swaminatha Ayyar's will."

This is what the learned Judges of the High Court said on that subject :—

> " As regards $\frac{2}{3}$ of the income of the properties given to the wife which the Will directs to be utilised for dharmam on her death, it is argued that the reference there is not to this choultry but to charity generally. The

learned Subordinate Judge has held that the word ' Dharmam ' refers to this choultry and we think he is right in that construction. In that view of the Will the choultry becomes entitled under Exhibit C to ¼ of the income of the properties."

Their Lordships hold that the will was not misunderstood by either of the Courts.

As to the fourth and last point argued by Mr. Upjohn that the first defendant, Vaidyanatha Ayyar, had been properly appointed a trustee of the chatram and ought not to have been removed, it is necessary to see what the appointment in fact was. His appointment was made by the 10th and 11th paragraphs of the will of Suri Ayyar, probate of which was granted on the 17th July, 1915. Suri Ayyar was the last survivor of the five brothers who were the sons of Kalyanarama Ayyar. The 10th and the 11th paragraphs of the will, as translated, were as follows :—

"10. The choultry mentioned in paragraph 3 aforesaid and the entire properties attached thereto shall be in the management of the aforementioned R. Vaidyanatha Ayyar. The Brahmin feeding and the Dwadasi Kattalai of the said choultry shall be conducted on a scale not inferior to what is being conducted now.

11. After the abovementioned Vaidyanatha Ayyar, his younger brother the said R. Narayanasami Ayyar and after him, my friend Jayakrishna chariar residing in Melakkaveri Achari Agraharam shall look after the management of the said choultry and of the entire properties attached thereto."

Turning to the 3rd paragraph of the will it will be seen what were the properties for the management of which Vaidyanatha Ayyar was appointed. That 3rd paragraph is, as translated, as follows :—

"3. Besides the abovesaid properties there are in Kumbakonam Town to the northern side of the Cauveri, my family choultry, the buildings attached thereto, lands, grounds, bandy pettai etc., properties. These belong to me and are in my possession and enjoyment."

Suri Ayyar was appointing Vaidyanatha Ayyar manager of properties which he falsely alleged belonged to himself as proprietor, and was not appointing him as a trustee of properties which were already trust properties. Suri Ayyar as the last survivor of the descendants in the male line of the founder of the chatram possibly had a right to appoint a trustee of the charity. See *Boidyo Gauranga Sahu* v. *Suderi Mata*, I.L.R. 40 Mad. 612. But that was not what he was professing to do. He was professing to appoint a manager of property which he falsely alleged to be his own private property, and in the opinion of the Subordinate Judge his object was to afford a monthly income for the daughter of his late concubine and her children.

After Mr. Upjohn had concluded his arguments in support of the appeals his junior counsel addressed the Board on a subject which Mr. Upjohn had not referred to and contended that some small portions of the properties did not belong to the trust, but they had been concurrently dealt with in the decrees of the Trial

Judge and the High Court as the properties of the charitable trust, and the attention of their Lordships was not directed to any evidence sufficient to justify the contention.

Their Lordships will humbly advise His Majesty that these consolidated appeals should be dismissed with costs.

In the Privy Council.

VAIDYANATHA AYYAR AND ANOTHER

v.

K. SWAMINATHA AYYAR AND ANOTHER

DELIVERED BY SIR JOHN EDGE.

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